

REMARKS

The Applicants thank the Examiner for the Office Action, made 'Final', of June 7, 2010, and the Advisory Action of August 19, 2010.

1. Summary of Case Status

All of claims 1 – 20 pending in the case currently stand rejected.

Claims 1 – 12, 13 and 15 – 20 were rejected under 35 USC 103(a) as being obvious given US Patent 6,234,677 of Mogil in view of US Patent 5,501,338 of Preston.

Claims 1 – 11, 16, 17, 19 and 20 were rejected under 35 USC 103(a) as being obvious given Mogil in view of US Patent 5,403,095 of Melk.

Claim 14 was rejected under 35 USC 103(a) as being obvious given Mogil and Melk and further in view of US Patent 5,020,921 of Beales.

Claims 3 and 4 were rejected under 35 USC 103(a) as being obvious given Mogil and Preston, (or alternatively Mogil and Melk); and further in view of the identified references of Arreazola, Sloan, Rucker and Ellison.

2. Notification of Co-Pending Prosecution

The Applicants draw the Examiner's Attention to co-pending US Patent Application 11 / 443,631, entitled "Container with Expandable Portion. This case was filed May 31, 2006, and published in document US 2007/0237432. The case was formerly examined by Examiner Devin Rae Oakes, and is now being examined by the Examiner in this case, Examiner Jes F. Pascua.

It appears that no cross-listing of this case has been submitted in the present matter to date. The file history of this case is available on PAIR. In addition to a requirement for restriction, there have been two Office Actions in the matter, (copies attached hereto as Attachments A and B):

- (a) September 21, 2009 (Non-Final)
- (b) April 2, 2010 (Final)

3. General Traverse of Rejections

As a preliminary matter, the Applicants again make a general traverse of any and all rejections of each claim pending in the case and requests reconsideration and withdrawal of those rejections. As a further preliminary matter, the Applicants incorporate by reference the arguments made in previous responses in this matter, and, in particular those arguments presented in respect of the issue of teaching away, including the case law citations therein.

4. Art Based Rejections – Mogil Teaches Collapsible Coolers

As previously, all of the rejections rely on US Patent 6,234,677 of Mogil (the first named inventor herein) as the principal reference.

The Applicants respectfully point out that the apparatus shown and described in the Mogil reference upon which the rejection relies is a double cooler in which both sides of the cooler are collapsible, as shown in Figures 20, 21, and 27 – 32 thereof. The Mogil reference explicitly teaches, and claims, that both sides are collapsible. See col. 3, lines 56 – 67; col. 13, lines 20 – 24 and col. 13, line 30 to col. 14 line 3; and independent claims 1, 2, 8, 10, 28 and 29.

Every claim of the Mogil reference is either directly or indirectly for “A soft-sided, *collapsible*, insulated container comprising: ...”

It is therefore plain on the face of the document that Mogil teaches away from the presently claimed invention, which, in each and every claim requires a rigid reinforcement “... such that said first portion has a non-collapsible rigid form.”, in the words of independent claim 1, and “said first portion being non-collapsible” in the words of independent claim 16.

5. Office Action Response Commentary

The Advisory Action of August 19, 2010 asserts that the reference does not teach away. Applicants submit that the Examiner's assertion is incorrect and that in fact Mogil clearly teaches away from the Applicants' claimed invention.

(a) Teaching Away – Destruction of Function

The Applicant refers to the following excerpt from MPEP 2143.01:

“V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE”

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) ...”

It is long established law that an invention cannot be obvious if the proposed combination or modification would destroy the functionality of the reference. (*In re Gordon*) Here, every claim in Mogil is for a collapsible insulated container. It is beyond rational argument, then, that the incorporation of a rigid tub would destroy the collapsible functionality of Mogil's claimed invention. *Prima facie* grounds for rejection cannot therefore be established on the basis of a combination of either (a) Mogil and Preston; or (b) Mogil and Melk.

(b) Mogil Unambiguously Teaches and Claims a Collapsible Cooler

Considering the reference, again, in detail, first, the Mogil double cooler application (now US Patent 6,234,677) expressly indicates at col. 13, lines 20 – 23 that:

“Figs. 15 – 31 show an alternative type of soft-sided, insulated wall, collapsible container assembly, indicated generally as 500.

At col. 13, lines 30 – 33 the application states:

“The basic lid, bottom, and sidewall construction of each of the first and second portions [*i.e.*, portions 502 and 504 identified at col. 13, lines 22 – 24] is the same as

described above in the context of containers **22** and **422**.”

At col. 6, lines 55 – 56:

“Container **22**, with liner **24** installed, can be folded to a collapsed position as shown in Figs. **1**, **7**, **8** and **9**. In this collapsed, or storage position ...”

At col. 11, lines 57 – 59:

“Container **422**, with liner **424** installed, can be folded to a collapsed position in a similar manner to that of container **22**, as shown in Figures **7**, **8** and **9** and described above.”

Thus, the application clearly indicates that both portions **502** and **504** are collapsible in the same manner as containers **22** and **422**. Furthermore the texts tells the reader at col. 5, lines 31 – 35 that Figures **20** and **21** show the double cooler assembly in the collapsed position. Looking at the illustrations the reader can observe that Figures **15 – 19** and **22 – 26** show the assembly in the expanded position; Figures **20 – 21** and **27 – 31** show it in the collapsed position

It is therefore beyond the realm of reasonable dispute that (a) the double cooler identified as item **500** is a collapsible cooler; and (b) the specification provided by Mogil describes it as such, *and nothing else*.

Further, the Mogil application describes many embodiments of foldable liners for use in those coolers, the whole underlying premise being that the liners fold up with the soft-sided, insulated, collapsible wall structures, as indicated at col. 6 lines 55 – 56 and col. 11, lines 57 – 59, quoted above. This is far more than sufficient to teach a person skilled in the art that the container is to be collapsible, not rigid.

Further still, Mogil explains the purpose and use of straps **534**, **536** and **552**, **554**, and co-operating hook-and-eye fabric strips **538**, **540**, **542**, **544**, **556**, **558**, **560**, **562**. The existence of these parts is inconsistent with any suggestion that the respective containers be anything other than collapsible. That existence is indeed “the kind of teaching that would discourage a person having ordinary skill in the art from providing a non-collapsible member within” Mogil’s insulated portions.

There is no possible room for doubt that Mogil is teaching that both sides of the

container are to be collapsible, not rigid. There is, therefore, no room left for a person of ordinary skill in the art to make the interpretation made in the Office Action of June 7, 2010 to the contrary.

(c) The Divider – Commentary in Advisory Action of August 19, 2010

The Advisory Action refers to Mogil Col. 13, lines 1 – 7, concerning Mogil's divider (item **425**). The Advisory Action says "The Examiner maintains that Mogil does not teach away from the concept of providing a substantially rigid, non-collapsible reinforcement member within a portion having a soft-sided insulated wall structure."

First, the Advisory Action rationale is not relevant to the issue of destruction of function.

Second, even if true, the comment is not directed to what the Applicant has claimed in either independent claim 1 or independent claim 16, and is, therefore, of no relevance to the patentability of either claim.

Further, even if the statement in the Advisory Action is correct (which the Applicant disputes, as indicated below), it is irrelevant to the issue of destruction of function. Mogil says, and claims, "collapsible". The Melk (or Preston, as may be) tub is not collapsible. The Melk (or Preston) tub therefore destroys the functionality of Mogil, partition or no partition.

As a factual matter, the divider partition of Mogil is irrelevant to the collapsibility of Mogil's apparatus. It is a flat planar panel. It does not prevent the Mogil collapsible cooler portions from being moved to their collapsed position. On the contrary, when the Mogil container is folded to its collapsed position the partition sits against the rear wall of the container. This simply cannot be done with a rigid liner as shown and described in either Preston or Melk.

The movable partition panel **425** does not detract from that collapsibility. More importantly, the Office Action has failed to show any basis in Mogil for the inference in the Office Action that the partition affects collapsibility or is relevant to collapsibility - because it doesn't, and it isn't. The interpretation in the Office Action contradicts what is shown, described, *and claimed* in the Mogil reference.

Considering the independent claims in detail –

Claim 1

Claim 1 recites, *inter alia*:

“a first portion and a second portion, the first portion being collapsible and the second portion being non-collapsible;”

“... a substantially rigid non-collapsible reinforcement member mounted [within the first portion];

“... said reinforcement member having substantially the same shape and size as said first portion, and defining a chamber within said enclosed space ...

“... said reinforcement member being mounted within said first portion such that said first portion has a non-collapsible rigid form;”

- (i) No matter how Mogil is interpreted, and contrary to the explicit wording of claim 1, both of Mogil's portions are collapsible – and they are explicitly shown, described, and claimed as such.
- (ii) Mogil's partition is not a “reinforcement”. It is a divider. A person of any level of skill in the art, reading the specification as a whole as required by law would easily understand the difference.
- (iii) Mogil's partition does not have “substantially the same shape and size” as the first portion.
- (iv) Mogil's reinforcement does not “define the chamber”. It does divide an existing chamber. That is what a “divider” does.
- (v) Mogil's partition does not give Mogil's first portion a “non-collapsible form.”

Claim 16

Independent claim 16 explicitly recites, *inter alia*:

“... a first insulated portion and a second insulated portion ...

“... said first insulated portion being non-collapsible;

“said second insulated portion being collapsible;”

“unlike said second portion, said first portion having a non-collapsible receptacle mounted therein, said receptacle being capable of holding liquids.

- (i) Again, no matter how Mogil is interpreted, Mogil shows, describes, *and claims* that both portions are collapsible.
- (ii) Similarly, no matter how Mogil is interpreted, partition **425** does not define a “*receptacle*”, let alone a “*non-collapsible receptacle*”, and still less “*a non-collapsible receptacle ... capable of holding liquids.*”

Statement concerning “beverages or foods”

The Advisory Action also states: “The Examiner further maintains that the removable capability of the non-collapsible members of Preston and Melk would not interfere with or destroy the collapsibility of the first portion in Mogil any more than when the first portion is filled containers of beverages or foods that are subsequently removed for consumption.”

It is not clear what aspect of the law of obviousness under 35 USC 103 is being addressed by this comment, or how it is relevant to what the Applicant have claimed.

Claim 1 requires, *inter alia*, that the reinforcement member be mounted within the first portion (“... the first portion having a soft-sided wall structure and a substantially rigid non-collapsible reinforcement member mounted therewithin...”). It is beside the point to say, “the structure is collapsible if you remove the reinforcement”, because as soon as the reinforcement is removed it is no longer “mounted therewithin”, and the object ceases to fall within the claim being examined. The Commissioner is obliged to examine the claims, not something else.

The relevance of the “beverages or foods” phrase is similarly unclear. The Office Action does not show any basis in the art or otherwise for the apparent suggestion that a person skilled in the art would either (a) fail to be able to distinguish between “beverages or foods” that might be carried in the container from the container itself that is being claimed; or (b) construe “beverages or foods” as being reinforcements within the meaning of the claim, even under the much-abused rule of “Broadest Reasonable Interpretation”.

Thus, even if true, the comment does not seem to have any apparent relevance to the invention claimed, or any known test for obviousness under 35 USC 103(a). What has it got to do with a claim that calls for a non-collapsible reinforcement,

mounted within the container, that is of the same size and shape as the container?

Summary on Destruction of Function as a form of Teaching Away

The issue is whether Mogil teaches away. A classic, and conclusive, way of demonstrating teaching away is a demonstration of destruction of function of the cited reference by the proposed combination or modification.

First, every single claim of the Mogil reference claims that the cooler is collapsible.

Second, it is factually undeniable that incorporation of the rigid liner of either Preston or Melk would destroy this collapsibility of the Mogil device.

Third, it is therefore inescapable that the proposed combination destroys the function of the claimed invention of the principal reference, Mogil. This is a straight-forward illustration of destruction of function under the rule of *In re Gordon*, supra.

The Applicant again traverses the rejections, requests their reconsideration, and requests allowance of the claims.

6. Amendment of Claim 1

There was formerly a possible ambiguity in claim 1 in respect of the noun that is being modified by the subordinate phrase "in which to receive objects". Claim 1 has been amended to remove that possible ambiguity. It is not intended that the substantive scope of the claim be altered in any way by this amendment.

CONCLUSION

The Applicants respectfully submit that all of the claims presently pending in this case are in a condition for allowance. The Applicants therefore respectfully request early and favourable disposition of this matter.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 01-2300, under Order No. 024643.00015 from which the undersigned is authorized to draw.

Respectfully submitted,

By



Charles M. Marmelstein
Registration No.: 25,895
Attorneys for Applicant(s)
Customer No. 04372
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036-5339
Tel 202.857.6000
Fax 202.857.6395
dcipdocket@arentfox.com

ATTACHMENTS: September 21, 2009 (Non-Final Office Action)
April 2, 2010 (Final Office Action)

**ATTACHMENT A****UNITED STATES PATENT AND TRADEMARK OFFICE**

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/443,631	05/31/2006	Melvin S. Mogil	P/5207-3	4253
2352 7590 09/21/2009 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 09/21/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/443,631	Applicant(s) MOGIL, MELVIN S.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/25/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A, claims 1-10, 21 and 22, in the reply filed on 06/15/2009 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, "said lifting member" lacks antecedence.

In claim 6, a first lifting member has not been previously set forth to warrant the language "a second lifting member".

In claim 10, "said insulated wall structure" lacks antecedence.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5-7 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,232,018 to Salander and U.S. Patent No. 6,102,172 to Dercole.

Salander discloses a soft sided container assembly comprising: a first container portion (124) and a second container portion (122); the first insulated container portion having a length and a breadth and a depth, the length being greater than the breadth, and the breadth being greater than the depth; first container portion having a first panel (1670), the first panel having a predominantly rectangular plan form, the rectangular plan form having a pair of first and second generally opposed long sides, and a pair of first and second generally opposed short sides; the first panel having a periphery; the first container portion having a peripheral wall (front face, sidewall (177) and rear face (1230)) mounted about the first panel, the peripheral wall extending away from the first panel in a direction of the depth, and the peripheral wall having a margin distant from first panel; first container portion having a second panel (i.e., the septum described in column 9, lines 43-56), the second panel having a predominantly rectangular plan form having a pair of first and second long sides, and a pair of first and second short sides; second panel being hingedly mounted to the margin of said peripheral wall along one of said long sides thereof; the second panel being movable between a closed position and an open position relative to peripheral wall; a first closure operable releasably to secure said second panel in said closed position; the second container portion being mounted

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to the second panel of the first container portion; the second container portion being movable from a collapsed position (see Figs. 14 and 15) to an expanded position (see Figs. 11-13), and the container assembly including members (1170, 1172) operable releasably to secure said second container portion in the collapsed position. Salander further discloses the second container portion having a second closure (172) mounted along one of the first and second short sides thereof.

Regarding claim 2, the D-ring (184) meets the recitation “a lifting member is mounted to said peripheral wall”. Applicant’s nomenclature for the position of the first short side of the peripheral does not define over the lifting member (184) of Salander mounted to the short side of the peripheral wall of the container assembly.

Regarding claim 5, the D-ring (184) meets the recitation “said lifting member is a handle mounted to said first short side of said peripheral wall of said first insulated container portion” to the degree that the D-ring of Salander is capable of being gripped by a user.

Regarding claim 6, Salander discloses a shoulder strap (186).

Regarding claim 7, Salander discloses an auxiliary lodgement (150) mounted to one of the long sides of the peripheral wall.

Regarding claim 21, Salander discloses both of the first and second container portions (122, 124) may include closed cell foam between inner and outer fabric layers. See column 10, lines 1-7. Therefore, Salander meets the recitation “said first container portion includes an outer skin, an inner skin and a flexible foam insulation layer captured between said inner and outer skins.

Moreover, the inherent, thermal insulating properties of closed cell foam renders the first and second container portions of Salander insulated, as claimed.

However, Salander does not disclose the closed cell foam being located in the peripheral wall of the first container portion. Dercole teaches that it is known provide a foam layer in the peripheral wall of the first container portion of an analogous container assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the closed sell foam of Salander in the peripheral wall of the first container portion, as suggested by Dercole, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Furthermore, Salander discloses the claimed invention, as discussed above, except for the second container portion having a predominantly rectangular footprint corresponding substantially to the predominantly rectangular footprint plan form of the second panel of the first container portion, having respective first and second long sides, and respective first and second short sides. It would have been an obvious matter of design choice to make the footprint of the second container portion of the modified Salander container assembly correspond to the footprint of the second panel of the first container portion, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

6. Claims 1-10, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,102,172 to Dercole and U.S. Patent No. 4,609,084 to Thomas.

Dercole discloses the claimed device, especially the insulated peripheral wall of the first container portion (B) and the insulated second container portion (E). See column 3, lines 50-56. However, Dercole does not disclose the second container portion including a main panel and a peripheral wall, the main panel having a peripheral margin with a pair of long portions and a short portion adjoining each other in a U-shape, the short portion being distant from a second closure member, and the peripheral wall being collapsible to permit the main panel of the second container portion to move to a position closer to the second panel when the second container portion is in a collapsed position than when the second container portion is in an expanded position. Dercole also does not disclose a second closure member of the second container portion having a first securement member operable to retain the second closure member in a closed position relative to the second container portion, and a second securement member operable to retain the closure member against the main panel when the second insulated container portion is in the collapsed position. Thomas teaches that it is known in the art to provide a second container portion (48, which is similar in construction to the another second container portion (40) and described in column 4, lines 41-68) including a main panel and a peripheral wall, the main panel having a peripheral margin with a pair of long portions and a short portion adjoining each other in a U-shape, the short portion being distant from a second closure

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member, and the peripheral wall being collapsible to permit the main panel of the second container portion to move to a position closer to the second panel when the second container portion is in a collapsed position than when the second container portion is in an expanded position. Thomas further discloses a second closure member of the second container portion having a first securement member operable to retain the second closure member in a closed position relative to the second container portion, and a second securement member operable to retain the closure member against the main panel when the second insulated container portion is in the collapsed position. It would have been obvious to person having ordinary skill in the art at the time the invention was made to replace the second container portion of Dercole with the second container portion of Thomas, in order provide a second container portion that capable of being maintained in a collapsed position, thus reducing the overall dimensions of the container assembly.

Furthermore, Dercole discloses the claimed invention, as discussed above, except for the second container portion having a predominantly rectangular footprint corresponding substantially to the predominantly rectangular footprint plan form of the second panel of the first container portion, having respective first and second long sides, and respective first and second short sides. It would have been an obvious matter of design choice to make the footprint of the second container portion of the modified Dercole container assembly correspond to the footprint of the second panel of the first container portion, since such a modification would have involved a mere change

in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 6, Dercole discloses the claimed invention, as discussed above, except that Dercole does not disclose a second lifting member including a shoulder strap. Thomas teaches that it is known in the art to provide a shoulder strap on an analogous container assembly. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the container assembly of Dercole with the shoulder strap of Thomas, in order to provide secondary lifting means.

Regarding claim 7, Dercole discloses the claimed invention, as discussed above, except for a collapsible, auxiliary lodgement mounted to one of the long sides of the peripheral wall of the first container portion. Thomas teaches that it is known in the art to provide a collapsible, auxiliary lodgement mounted to one of the long sides of the peripheral wall of the first container portion in an analogous container assembly. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to mount one of the long sides of the peripheral wall of Dercole with the collapsible, auxiliary lodgement of Thomas, in order to increase the carrying capacity of the container assembly. Furthermore, it would have been to mount the collapsible, auxiliary lodgement of Thomas on the long side opposite to the long portion of the peripheral sidewall to which the second panel is hingedly mounted in Dercole, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding claim 8, the collapsible, auxiliary lodgement of Thomas is considered to be uninsulated to the same degree as claimed.

Regarding claim 9, the tray (37) of Dercole meets the recitation of at least one of the first and second container portions having liner.

Regarding claim 10, Dercole discloses the claimed invention, as discussed above, except for the tray being more rigid than the insulated wall structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use material for the tray that is more rigid than the insulated wall structure of Dercole, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 22, tray (37) of Dercole is "washable" (i.e., capable of being washed) to the same degree as claimed. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented

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claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/
Primary Examiner, Art Unit 3782

Notice of References Cited	Application/Control No. 11/443,631	Applicant(s)/Patent Under Reexamination MOGIL, MELVIN S.	
	Examiner Jes F. Pascua	Art Unit 3782	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2,730,152 A	01-1956	CHARLES STAKOFSKY	150/116
*	B	US-2,851,076 A	09-1958	CHARLES STAKOFSKY	150/116
*	C	US-4,609,084 A	09-1986	Thomas, Frank O.	190/110
*	D	US-4,752,008 A	06-1988	Pratt, Michael J.	206/579
*	E	US-4,817,802 A	04-1989	Pratt, Michael J.	206/579
*	F	US-5,010,988 A	04-1991	Brown, Lauren	190/104
*	G	US-5,497,919 A	03-1996	Klinger, Paul D.	224/416
*	H	US-5,873,504 A	02-1999	Farmer, Edmund L.	224/576
*	I	US-6,102,172 A	08-2000	Dercole, Bonnie Lee	190/18A
*	J	US-7,232,018 B1	06-2007	Salander, Mark T.	190/108
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



ATTACHMENT B

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/443,631	05/31/2006	Melvin S. Mogil	P/5207-3	4253
2352 7590 04/02/2010 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 04/02/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/443,631	Applicant(s) MOGIL, MELVIN S.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5-7, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,232,018 to Salander and U.S. Patent No. 6,102,172 to Dercole.

Salander discloses a soft sided container assembly comprising: a first container portion (124) and a second container portion (122); the first insulated container portion having a length and a breadth and a depth, the length being greater than the breadth, and the breadth being greater than the depth; first container portion having a first panel (1670), the first panel having a predominantly rectangular plan form, the rectangular plan form having a pair of first and second generally opposed long sides, and a pair of first and second generally opposed short sides; the first panel having a periphery; the first container portion having a peripheral wall (front face, sidewall (177) and rear face (1230)) mounted about the first panel, the peripheral wall extending away from the first panel in a direction of the depth, and the peripheral wall having a margin distant from first panel; first container portion having a second panel (i.e., the septum described in column 9, lines 43-56), the second panel having a predominantly rectangular plan form having a pair of first and second long sides, and a pair of first and second short sides;

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second panel being hingedly mounted to the margin of said peripheral wall along one of said long sides thereof; the second panel being movable between a closed position and an open position relative to peripheral wall; a first closure operable releasably to secure said second panel in said closed position; the second container portion being mounted to the second panel of the first container portion; the second container portion being movable from a collapsed position (see Figs. 14 and 15) to an expanded position (see Figs. 11-13), and the container assembly including members (1170, 1172) operable releasably to secure said second container portion in the collapsed position. Salander further discloses the second container portion having a second closure (172) mounted along one of the first and second short sides thereof.

Regarding claim 2, the D-ring (184) meets the recitation "a lifting member is mounted to said peripheral wall". Applicant's nomenclature for the position of the first short side of the peripheral does not define over the lifting member (184) of Salander mounted to the short side of the peripheral wall of the container assembly.

Regarding claim 5, the D-ring (184) meets the recitation "said lifting member is a handle mounted to said first short side of said peripheral wall of said first insulated container portion" to the degree that the D-ring of Salander is capable of being gripped by a user.

Regarding claim 6, Salander discloses a shoulder strap (186).

Regarding claim 7, Salander discloses an auxiliary lodgement (150) mounted to one of the long sides of the peripheral wall.

Regarding claim 21, Salander discloses both of the first and second container portions (122, 124) may include closed cell foam between inner and outer fabric layers. See column 10, lines 1-7. Therefore, Salander meets the recitation "said first container portion includes an outer skin, an inner skin and a flexible foam insulation layer captured between said inner and outer skins.

Moreover, the inherent, thermal insulating properties of closed cell foam renders the first and second container portions of Salander insulated, as claimed.

However, Salander does not disclose the closed cell foam being located in the peripheral wall of the first container portion. Dercole teaches that it is known to provide a foam layer in the peripheral wall of the first container portion of an analogous container assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the closed cell foam of Salander in the peripheral wall of the first container portion, as suggested by Dercole, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Furthermore, Salander discloses the claimed invention, as discussed above, except for the second container portion having a predominantly rectangular footprint corresponding substantially to the predominantly rectangular footprint plan form of the second panel of the first container portion, having respective first and second long sides, and respective first and second short sides. It would have been an obvious matter of design choice to make the footprint of the second container portion of the modified Salander container assembly correspond to the footprint of the second panel of the first container portion, since such a modification would have involved a mere

change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

It is noted that the luggage system of Salander meets the recitation "said soft-sided insulated container assembly defining a lunch container assembly" to the degree the claims set forth the metes and bounds of a "lunch container assembly". Regarding the recitation "adapted for use maintaining either foods or beverages in a cooled or warmed condition", it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense, especially in light of the Salander disclosure that both of the first and second container portions (122, 124) may include closed cell foam between inner and outer fabric layers. See column 10, lines 1-7. The closed cell foam inherently provides the luggage system of Salander the ability to maintain either foods or beverages in a cooled or warmed condition.

Regarding claim 23, Salander discloses the claimed invention, as discussed above, except for the first container having a length which lies in the range of 1 to 2 times its width, and the length is in the range of 2 to 5 times its depth. It would have been an obvious matter of design choice to provide the first container of Salander with a length which lies in the range of 1 to 2 times its width, and the length is in the range of 2 to 5 times its depth, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. There is nothing the in the four corners of the

specification that sets forth the claimed range of sizes for the applicant first container as being critical and providing an unexpected result.

3. Claims 1-10 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,102,172 to Dercole and U.S. Patent No. 4,609,084 to Thomas.

Dercole discloses the claimed device, especially the insulated peripheral wall of the first container portion (B) and the insulated second container portion (E). See column 3, lines 50-56. However, Dercole does not disclose the second container portion including a main panel and a peripheral wall, the main panel having a peripheral margin with a pair of long portions and a short portion adjoining each other in a U-shape, the short portion being distant from a second closure member, and the peripheral wall being collapsible to permit the main panel of the second container portion to move to a position closer to the second panel when the second container portion is in a collapsed position than when the second container portion is in an expanded position. Dercole also does not disclose a second closure member of the second container portion having a first securement member operable to retain the second closure member in a closed position relative to the second container portion, and a second securement member operable to retain the closure member against the main panel when the second insulated container portion is in the collapsed position. Thomas teaches that it is known in the art to provide a second container portion (48, which is similar in construction to the another second container portion (40) and

described in column 4, lines 41-68) including a main panel and a peripheral wall, the main panel having a peripheral margin with a pair of long portions and a short portion adjoining each other in a U-shape, the short portion being distant from a second closure member, and the peripheral wall being collapsible to permit the main panel of the second container portion to move to a position closer to the second panel when the second container portion is in a collapsed position than when the second container portion is in an expanded position. Thomas further discloses a second closure member of the second container portion having a first securement member operable to retain the second closure member in a closed position relative to the second container portion, and a second securement member operable to retain the closure member against the main panel when the second insulated container portion is in the collapsed position. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the second container portion of Dercole with the second container portion of Thomas, in order to provide a second container portion that is capable of being maintained in a collapsed position, thus reducing the overall dimensions of the container assembly.

Furthermore, Dercole discloses the claimed invention, as discussed above, except for the second container portion having a predominantly rectangular footprint corresponding substantially to the predominantly rectangular footprint plan form of the second panel of the first container portion, having respective first and second long sides, and respective first and second short sides. It would have been an obvious matter of design choice to make the footprint of the second container portion of the

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modified Dercole container assembly correspond to the footprint of the second panel of the first container portion, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 6, Dercole discloses the claimed invention, as discussed above, except that Dercole does not disclose a second lifting member including a shoulder strap. Thomas teaches that it is known in the art to provide a shoulder strap on an analogous container assembly. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the container assembly of Dercole with the shoulder strap of Thomas, in order to provide secondary lifting means.

Regarding claim 7, Dercole discloses the claimed invention, as discussed above, except for a collapsible, auxiliary lodgement mounted to one of the long sides of the peripheral wall of the first container portion. Thomas teaches that it is known in the art to provide a collapsible, auxiliary lodgement mounted to one of the long sides of the peripheral wall of the first container portion in an analogous container assembly. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to mount one of the long sides of the peripheral wall of Dercole with the collapsible, auxiliary lodgement of Thomas, in order to increase the carrying capacity of the container assembly. Furthermore, it would have been to mount the collapsible, auxiliary lodgement of Thomas on the long side opposite to the long portion of the peripheral sidewall to which the second panel is hingedly mounted in Dercole,

since it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding claim 8, the collapsible, auxiliary lodgement of Thomas is considered to be uninsulated to the same degree as claimed.

Regarding claim 9, the tray (37) of Dercole meets the recitation of at least one of the first and second container portions having liner.

Regarding claim 10, Dercole discloses the claimed invention, as discussed above, except for the tray being more rigid than the insulated wall structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use material for the tray that is more rigid than the insulated wall structure of Dercole, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 22, tray (37) of Dercole is "washable" (i.e., capable of being washed) to the same degree as claimed. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

It is noted that the carrying case of Dercole meets the recitation "said soft-sided insulated container assembly defining a lunch container assembly" to the degree the claims set forth the metes and bounds of a "lunch container assembly". Regarding the recitation "adapted for use maintaining either foods or beverages in a cooled or warmed condition", it has been held that the recitation that an element is "adapted to" perform a

function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense, especially in light of the Dercole disclosure that it is desirable to protect the contents against high temperatures. The thermal barrier (36) used in conjunction with the insulating foam layer (35) provide the carrying case of Dercole the ability to maintain either foods or beverages in a cooled or warmed condition.

Regarding claim 23, Dercole discloses the claimed invention, as discussed above, except for the first container having a length which lies in the range of 1 to 2 times its width, and the length is in the range of 2 to 5 times its depth. It would have been an obvious matter of design choice to provide the first container of Dercole with a length which lies in the range of 1 to 2 times its width, and the length is in the range of 2 to 5 times its depth, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. There is nothing the in the four corners of the specification that sets forth the claimed range of sizes for the applicant first container as being critical and providing an unexpected result.

Response to Arguments

4. Applicant's arguments filed 21/23/2009 have been fully considered but they are not persuasive.

Applicant opines that the "matter of design choice" statement in the Office Action regarding the second container portion having a substantially rectangular footprint

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corresponding to the predominantly rectangular plan form of the second panel of the first container portion "effectively reads the language out of the claim, and gives it no meaning." Applicant fails to address the entire passage of the Office Action which states, "It would have been an obvious matter of design choice to make the footprint of the second container portion of the modified Salander container assembly correspond to the footprint of the second panel of the first container portion, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art." It's clear that the Office Action did not ignore the claimed feature or "read the feature out of the claim"; it gave the claimed feature little patentable weight. In light of the Office Action addressing the claimed feature, as discussed above, is noted that applicant's remarks fail to present evidence that a second container portion having a substantially rectangular footprint corresponding to a predominantly rectangular plan form of a second panel of a first container portion is critical and provides an unexpected result.

In response to applicant's argument that "Salander does not describe an insulated container, makes no mention of thermal insulation or of any thermal insulative properties, or claim to have such properties", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, Salander discloses both of the first and second container portions (122, 124) may include **closed cell foam between inner and outer fabric layers**. See

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column 10, lines 1-7. Applicant's specification states, "Insulated container assembly **20** may be a soft sided insulated container assembly, in which the wall structure may typically include an outer layer or skin **130**, an internal layer (or layers) of insulating material **132**, and inner layer or skin **134**. Insulating material **132** may itself be a sandwich of insulating layers or sub layers, such as a **closed cell foam layer, 136**, an open cell foam layer **138**, and a **closed cell foam layer 140**." (emphasis added). See applicant's specification, page 12, lines 3-8 and page 17, lines 1-2. Therefore, having disclosed one of applicant's "insulating layers", the closed cell foam layer of Salander inherently has thermally insulative properties.

In response to applicant's argument that the combination of Salander and Dercole do not provide a soft-sided insulated container because the display carrying case of Dercole refers to a trunk, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, Dercole teaches that it is known to provide an insulating foam layer (35) in the peripheral wall of the first container portion (trunk-like box B) of an analogous container assembly. See column 3, lines 50-56. The Examiner maintains that it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the closed cell foam of Salander in the peripheral wall of the first container portion, as suggested by Dercole

Regarding applicant's remark that the trunk of Dercole is not a soft-sided container, Dercole discloses the trunk-like box B as including a flexible back panel (20) with a thermal barrier (36) extending on all sides front and back as well as top and bottom of the trunk and is used in conjunction with an insulating sheet (35), thus meeting the claimed soft-sided, insulated container.

Applicant remarks that no "clearly articulated reason" for the combination of Dercole and Thomas has been made. The Examiner disagrees. The Office Action clearly sets forth that Thomas discloses claimed features for the second container portion, not found in Dercole, in an analogous carrying case. The Office Action then clearly articulates the reason for such a combination with the statement "in order to provide a second container portion that is capable of being maintained in a collapsed position, thus reducing the overall dimensions of the container assembly."

Regarding applicant's remark that neither Dercole nor Thomas demonstrate the claimed feature of a second container portion having a foot print corresponding to the plan form of the second panel, the second container portion of Thomas meets this recitation insofar as the claim sets forth the metes and bounds of the language "corresponding substantially" to preclude a second container portion with a rectangular footprint that is smaller than the rectangular plan form of the second panel of the first container.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Applicant is duly reminded that **a complete response must satisfy the requirements of 37 C.F. R. 1.111**, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments

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made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/
Primary Examiner, Art Unit 3782